UNITED STATES DISTRICT COURT
EASTERN OF NEW YORK

MALIBU MEDIA, LLC, Plaintiff, vs. JOHN DOE subscriber assigned IP address 68.194.153.154, Defendant.	Case No. 2:15-cv-04802-SJF-SIL **JOINT CIVIL CASE MANAGMENT PLAN**

1. Pursuant to Fed.R.Civ.P. 26(f), a conference was held on March 27, 2017. Participants to the conference were Jacqueline M. James of The James Law Firm, Attorneys for the Plaintiff, and Peter Caro Dee, Esq. of Mavronicolas & Dee LLP, Attorney for Defendant. The conference was held in counsel's respective offices telephonically.

2. All parties [consent ___X_ / do not consent ____] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences.

3. Discovery deadlines:

a. All fact discovery to be completed no later than **December 29, 2017**.
b. Initial disclosures due by **April 12, 2017**.
c. Motions to amend or to join additional parties to be filed by **June 29, 2017**.
d. Initial requests for production of documents to be served by **April 12, 2017**.
e. Interrogatories to be served by **April 12, 2017**.
f. Depositions to be completed by **June 29, 2017**.
g. Requests to Admit to be served by **November 24, 2017**.
h. All expert discovery to be completed by **December 29, 2017**.
i. Plaintiff's expert reports due by **September 29, 2017**.
j. Defendant's rebuttal experts' reports due by **October 27, 2017**.
k. Plaintiff's reply experts' reports due by **November 10, 2017.**
l. Dispositive motions due by **January 26, 2018**.
m. Pre-trial Order/trial to be ready by **March 29, 2018.**

4. Counsel for the parties have conferred, and their present best estimate of the length of trial is 4 days.

5. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.

a. **Plaintiff's position is that Production of Electronically Stored Information should be handled as follows**:

   i. Plaintiff's position is that Defendant must preserve, and must immediately take efforts to prevent the destruction, expiration, deletion, overwriting, concealment, or modification (even if such data would otherwise expire, be deleted or overwritten, concealed, or modified in the normal course of business, including through the termination of user accounts) of Electronically Stored Information ("ESI") reasonably related to this litigation in Defendant's possession, custody, or control. This includes preservation of all the following:

      1) Defendant's laptops, desktops, tablets, mobile phones, external storage devices, portable hard drives, external hard drives, Network Attached Storage, USB (thumb) drives, and any other device which can be used to connect to the internet, download media files, or store electronic data (collectively, "Hard Drives"). Defendant can achieve preservation by retaining an expert to create forensically sound images of Defendant's Hard Drives or not engaging in any of the following activities: (1) deleting any data within any of Defendant's Hard Drives; (2) using data shredding, overwriting, or wiping applications; (3) defragmenting any Hard Drives; (4) re-imaging or replacing drives; (5) compressing a Hard Drive; (6) deleting internet cookies; (7) deleting browser history and favorites; (8) running any "disk clean-up" processes; (9) installing and uninstalling software on any Hard Drive; (10) updating an operating system on any Hard Drive; and/or (11) taking any actions inconsistent with Defendant's preservation obligations for electronically stored information or computer Hard Drives;
      2) All contents of any third party cloud storage service such as Amazon Cloud Drive, Apple iCloud, DropBox, Google Drive, MediaFire, Mega, Microsoft SkyDrive, OneDrive, SpiderOak, and Ubuntu One; and
      3) Defendant's modem and router used in his home during the period of recorded infringement.
      4) All emails, notifications, or correspondence from Defendant's Internet Service Provider ("ISP") to Defendant under the ISP's Copyright Alert System ("CAS").
      5) All emails, notifications, or correspondence from Defendant's Internet Service Provider to Defendant regarding a DMCA notice.

   ii. In discovery, Plaintiff will be requesting complete forensically sound copies of Defendant's Hard Drives. Plaintiff's position is that the forensically sound images should be created by a computer professional or Plaintiff's expert and produced in EnCase E01 format. It is Plaintiff's position that Defendant is responsible for the cost of duplicating the Hard Drives. Plaintiff agrees to pay the cost of Hard Drive examination. If examination of Defendant's Hard Drives reveal evidence of spoliation, examination may further include the restoration or recovery of deleted files or fragments. Nothing in this plan precludes Plaintiff from an award of costs should it succeed at trial.

iii. It is Plaintiff's position that Defendant should not turn on, use, or alter his computer hard drives until after a forensically sound image of each Hard Drive has been created by a computer professional and subsequently verified by Plaintiff's expert. This prohibition should include, but is not limited to, deleting any electronically stored information; utilizing such procedures as de-fragmenting computer hard drives, deleting internet cookies, deleting browser history and favorites, running any "disk clean-up" processes; and/or taking any actions inconsistent with Defendant's preservation obligations for electronically stored information or computer hard drives.

iv. Plaintiff will be producing: (a) PCAPs; (b) .torrent files; (c) computer media files that correlate to each of the .torrent files downloaded and distributed by Defendant; (d) technical reports; (e) original version of the Infringed Works; (f) MySQL log files; and (g) Additional Evidence of Third-Party downloads, and mp4 files that correlate to the infringed works. The PCAPs, .torrent files, computer media files, technical reports, and original version of the Infringed Works will be produced in their native format and sent to defense counsel on a DVD disk or USB drive. All other documents will be produced in readable form, either in excel (.xls) or PDF form.

b. **Defendant's Position Regarding Production of ESI**

i. Defendant disagrees substantially with Plaintiff's position regarding ESI in this suit. As an initial matter, the position that Defendant shall not use any electronic device in his home unless he makes a forensic copy of the same is untenable, and in no way represents Defendant's actual preservation responsibilities. Plaintiff's unnecessarily broad definition of electronic devices, includes all mobile phones, tablets, and "any device that can be connected to the internet" without regard for whether the particular devices could even theoretically be used to commit the infringements at issue.

ii. Defendant likewise disagrees that he should bear any cost for the overbroad imaging of every device that has ever existed in his home. The federal rules are clear that a party must only make information available for copying, and does not have an obligation to make and provide copies for the requesting party. To the extent that Plaintiff seeks forensically sound images of dozens of irrelevant devices, it is most certainly Plaintiff's obligation to pay for the creation of the same.

iii. Plaintiff's position that Defendant may not even "turn on" any electronic device in his home is patently ridiculous. Plaintiff can point to no support for its proposition that Defendant's preservation demands are as broad as Plaintiff characterizes them. This case involves a limited number of identifiable files that Plaintiff claims were downloaded via a particular protocol. Defendant will preserve any files corresponding to the allegedly infringed files, as well as any torrent clients or other programs that could even theoretically be used to commit the infringements identified in the amended complaint.

iv. Defendant further objects to Plaintiff's proposed protocol for examination of hard drives, as it makes no effort to separate relevant from irrelevant data, makes no attempt to limit the production of privileged material and includes no protocol for dealing with privileged material that may be on a defendant's devices. Defendant suggests that any review of electronic devices be handled as follows. Plaintiff may identify keywords or data strings corresponding to the works that were allegedly infringed in this matter. A third party expert retained by Defendant can then conduct the query, and provide any responsive documents to counsel for Defendant, who may then remove any documents protected by any privilege. This proposed search protocol is superior to Plaintiff's because it is a) repeatable and b) provides adequate protection for Defendant's privileged materials, and c) prohibits Plaintiff from an unrestrained review of the contents of any document that it may choose on Defendant's hard drive, without regard to the documents possible relevance in the instant case.

v. Defendant will be seeking information regarding the creation of the works at issue in this lawsuit, Plaintiff's standing to bring the instant lawsuit, its ownership of the works at issue, and its financial and other arrangements with IPP, Ltd, Excipio, Guardeley, and various other third parties that are responsible for running this litigation and collecting the proceeds therefrom. Malibu Media has previously been reluctant to provide any documents evidencing its ownership of any works (including work for hire or employment agreements), and Defendant expects similar reluctance in the instant case.

vi. Defendant is also concerned that Malibu Media has, quite intentionally, retained German nationals and companies to conduct the data collection and surveillance at issue here. Malibu Media has previously used the fact that these entities are beyond the reach of US subpoenas to limit their availability to be deposed or otherwise questioned regarding their involvement in these suits. Defendant seeks assurances that Plaintiff will be required to make its contractors available for discovery or be prohibited from introducing evidence from the same at trial.

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